THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.22047 of 2003

Date 22.09.2005

Between:

S.P. Panigrahi, S/o. Sri L.N. Panigrahi, Deputy Manager (Legal),
working in Food Corporation at Regional Office, Hyderabad.

..... PETITIONER

AND

Food Corporation of India, Represented by the Managing Director, 16-20,
Barakhamba Lane, New Delhi.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.22047 OF 2003

O R D E R:

The relief sought for in this writ petition is to quash the proceedings of the respondent dated 19.06.2003 as illegal, arbitrary and in violation of principles of natural justice and consequently direct the respondent to promote the petitioner as Joint Manger (Legal) in an existing vacancy.

Facts, to the extent necessary for this writ petition, are that the petitioner, on being appointed as the Deputy Manager (Legal), joined the respondent-Corporation on 13.08.1990. He was posted initially at Bombay and thereafter, transferred to Bhubeneshwar in the year 1994, wherein he worked upto 1998.

He was later transferred to Patna, wherein he worked till 2002, and thereafter was again transferred to Bhubeneshwar wherein he worked till 10.02.2003. The petitioner is said to have joined the Regional Office at Hyderabad on 13.02.2003. During the period when the petitioner was working in the Regional Office at Hyderabad, the present writ petition came to be filed.

It is the case of the petitioner that under the Regulations of the Food Corporation of India (hereinafter referred to as 'F.C.I.'), a person who has completed minimum of 5 years service as Deputy Manager (Legal) is eligible for promotion to the post of Joint Manager (Legal) and though the petitioner had completed the minimum stipulated 5 years service as Deputy Manager (Legal) in 1996 itself and had become eligible, he has, till date, not been promoted as Joint Manager (Legal). The petitioner contends that he possesses educational qualifications of M.Sc., L.L.B., and is qualified to hold the post of the Joint Manager (Legal), that he has always been discharging his duties to the utmost satisfaction of his superiors, and that in the month of November 2001, 4 vacancies arose in the post of Joint Manger (Legal) and two persons i.e. Ms.Ranjane Nicose and Sri Narahari Babu, who were admittedly juniors to the petitioner, were promoted and the remaining two vacancies of Joint Manger (Legal) were kept vacant. The petitioner contends that since he is eligible to be promoted as Joint Manager (Legal) and his juniors were promoted ignoring his legitimate claim, the action of the respondents is in violation of Articles 14 and 16 of the Constitution of India. The petitioner submitted a representation to the Managing Director of the respondent-Corporation on 20.03.2003 questioning non-inclusion of his name in the panel of the Joint Manager (Legal). The said representation was rejected on 19.06.2003, resulting in the present writ petition being filed before this Court.

Elaborate submissions were made by Sri Philkhana Rama Rao, learned counsel for the petitioner. Learned counsel would refer to the corrigendum issued by the F.C.I., on 18.07.1995, wherein for promotions within Category-I from the post of the Deputy Managers to that of the Joint Managers or its equivalent, the 'benchmark' grade prescribed is 'Good'. However, officers graded as 'Outstanding' would rank en-block senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en-bloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto

the number of vacancies. Officers, with the same grading, maintain their inter-se seniority in the feeder post.

Learned counsel would refer to the Office Memorandum, dated 08.02.2002, issued by the Ministry of Personnel, Public grievances and Pensions Department of Personnel and Training, Government of India, which details the procedure to be observed, by Departmental Promotion Committees, in matters of promotion. Learned counsel would seek to make a distinction between posts which carry the scale of pay below Rs.12,000-16,500/- and those above, to contend that for promotions to the level in the pay scale of Rs.12,000-16,500/- and above, the mode of promotion is selection by merit, the bench mark prescribed is 'Very Good', whereas for promotion to posts which carry a scale of pay less than Rs.12,000-16,500/-, the revised guidelines in para 3 of the Office Memorandum, dated 08.02.2002, would merely require a rating of 'Good' to be eligible for promotion. Learned counsel would refer to the office order of F.C.I. dated 23.11.2001, whereunder two candidates were promoted to the post of the Joint Manager (Legal), from which, it is clear that the post of Joint Manager (Legal) is in the scale of pay of Rs.10000-525-15200 and Rs.10,750-800-15750, both of which are below the scale of pay of Rs.12,000-16,500. Para 3 of the revised guidelines, as prescribed in the Office Memorandum dated 08.02.2002, reads as under:

> The aforesaid guidelines which permit supersession in 'selection' promotion ('selection by merit') have been reviewed by the Government and after comprehensive/extensive examination of relevant issues it has been decided that there should be no supersession in matter of 'selection' (merit) promotion at any level. In keeping with the said decision, the following revised promotion norms/guidelines, in partial modification (to the extent relevant for the purpose of these instructions on all existing instructions on the subject (as referred to in paragraph 1 above) are prescribed in the succeeding paragraphs for providing guidance to the Departmental Promotion Committees (DPCs)
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> 3.1 MODE OF PROMOTION:
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> In the case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection-cum-seniority') is dispensed with and the mode of promotion in all such cases is rechristoned as 'selection' only. The element of selectivity (higher or lower) shall be determined with reference to

the relevant bench-mark ("very Good" or "Good") prescribed for promotion.

2. 'BENCH MARK' FOR PROMOTION:

The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed Bench-mark and accordingly grade the Officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se-seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC it shall not be included in the select panel. Thus there shall be no super session in promotion amount those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

3.2.1. Although among those who meet the prescribed bench-mark, inter-se-seniority of the feeder grade shall remain intact, eligibility for promotion will no doubt be subject to fulfillment of all the conditions laid down in the relevant Recruitment/Services Rules, including the conditions that one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility service in the feeder post.

3.3 Promotion to the revised pay-scale (grade) of Rs.12,000-16,500 and above

i. The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.

ii. The bench-mark for promotion, as it is now, shall continue to be 'very good'. This will ensure aliment of higher selectivity in comparison to selection promotions to the grades lower than the aforesaid level where the bench-mark, as indicated in the following paragraphs, shall be 'good' only.

iii. The DPC shall for promotions to said pay-scale (grade) and above, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel, prepared by the DPC in order of their inter-se-seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'very good'.

3 . 4 Promotion to grades below the revised pay-scale (grade) of Rs.12,000-16,500/- (including promotions) from lower Groups (A Posts/grades/services)

i. The mode of promotion, as indicated in paragraph 3.1 above shall

be 'selection'.

ii. The bench-mark for promotion, as it is now, shall continue to be 'good'.

iii. The DPC shall for promotion to posts/grades/services in the aforesaid categories, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se-seniority in the feeder grade. Thus as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench mark of 'good'.

Learned counsel would submit that since the petitioner's rating is 'Good', he ought to have been considered for promotion to the post of the Joint Manager (Legal) when the other two candidates were promoted to the said post in the year 2001. The promotions given to the two candidates in Office order, dated 23.11.2001, cannot be adjudicated in the present writ petition in the absence of both the candidates being arrayed as respondents herein. Sri Philkhana Rama Rao, learned counsel for the petitioner, would submit that even if promotion of the two other officers cannot be adjudicated, petitioner's case should atleast be considered in the existing vacancies of Joint Manager (Legal). Learned counsel would refer to the ratings detailed in paragraph 3 of the counter affidavit and submit that in the years 1996-97, the petitioner's rating was shown as 'Good', which was downgraded to 'Fair' in the year 2000 and further downgraded to 'Unfit' in the year 2001. Learned counsel would contend that though downgrading the rating of the petitioner, would not be an adverse remark, nonetheless, such downgrading would have an adverse effect on his promotional opportunities necessitating the respondent-Corporation giving him an opportunity of being heard before his rating in his annual confidential reports are downgraded. Learned counsel would place reliance on the judgment in **U.P. JAL NIGAM V. PRABHAT CHANDRA JAIN**, wherein the Supreme Court held as follows:

> "We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not down grading of an entry. It has been urged on behalf of the Nigam that when the

> nature of the entry does not reflect any adverseness that is not required to be communicated. As we view the extreme illustration given by the High Court may reflect and adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such down grading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

It is clear, from the aforesaid judgment, that since an employee is adversely affected by the downward change in his rating, it is necessary that he be put on notice and be given an opportunity to submit his objections thereto. I find considerable force in the submission of Mr.Philkhana Rama Rao, learned counsel for the petitioner, that the respondent-Corporation ought to have given the petitioner an opportunity of being heard and to submit his objections thereto. The contention of the learned counsel that the rating for promotion as per the Government of India Office Memorandum, dated 08.02.2002, would automatically bind the F.C.I. cannot be accepted, since it has been pointed out that the F.C.I. has prescribed a promotion policy as detailed in its Circular dated 22.07.2002, whereunder only candidates who secured 'Very Good' or 'outstanding' are to be graded as 'Fit' for the purpose of promotion to posts above that of Deputy Manager, which would include the post of Joint Manager. The Circular dated 22.07.2002 issued by F.C.I is in view of the fact that the Central Government, in its Office Memorandum, dated 08.02.2002, had left it

open to the respective departments to frame their own service rules, keeping in mind, the guidelines issued in the Office Memorandum dated 08.02.2002. While the Office Memorandum dated 08.02.2002, prescribes 'Good' as the bench mark for promotion to the post of Joint Manager, the F.C.I., in its wisdom, has chosen to prescribe the higher rating of "Very Good" as the bench mark for promotion to the posts above that of Deputy Manager, which would include the post of Joint Manager. Mr.Philkhana Rama Rao, learned counsel for the petitioner, would refer to the Circular of F.CI. dated 22.07.2002 itself, to contend that the F.C.I. was bound to follow the conditions prescribed in the Office Memorandum, dated 08.02.2002, and that it did not have the power to prescribe any conditions contrary thereto. It is to be noticed that there is no challenge to the promotion policy, as enunciated in the Circular of the F.C.I. dated 22.07.2002, in the present writ petition. In the absence of any challenge to its validity, the question as to whether the F.C.I. was entitled to prescribe a higher bench mark of 'Very Good' as against the prescription of 'Good' by the Government of India Office Memorandum, dated 08.02.2002, cannot be adjudicated, in the present writ petition.

The other contention of Mr.Philkhana Rama Rao that the petitioner is entitled to be promoted in the existing vacancies of the Joint Manager (Legal), cannot also be accepted. It is for the authorities concerned to decide as to whether a post is required to be filled up or kept vacant. No Mandamus can be issued directing authorities to fill up the existing vacancies since these are all matters of administrative choices which the respondents are required to make, keeping in mind, their manpower requirements.

Since the allegation, that the petitioner was not put on notice prior to his rating being downgraded in the Annual Confidential reports, are made only in the reply affidavit, learned counsel for the respondent would submit that these facts could not be denied in the counter affidavit filed earlier. In such circumstances, I consider it appropriate to direct the respondents, in case the petitioner's rating was downgraded from 'Good' to 'Fair' in the year 2000 and from 'Fair' to 'Unfit' in the year 2001, was not communicated to him, to communicate the same to the petitioner, give him an opportunity of submitting his representation thereto, and thereafter, take a decision as to whether the ratings in the annual confidential reports should be retained or modified.

Needless to state that, in case, the respondents, after complying with the aforesaid directions, decide to give the petitioner the rating of 'Very Good', he would then be eligible to be considered for promotion to the post of Joint Manger (Legal) as and when the respondents choose to fill up the vacancies available in the said post.

Learned counsel for the petitioner expresses his apprehension that in case, the F.C.I. chooses to revise its promotion policy, the direction of this Court may be construed as necessitating consideration of the case of the petitioner only if his rating is "Very Good" irrespective of any revision, in its promotion policy by the F.C.I. I see no basis for such an apprehension. Needless to state that the prescription of rating of 'Very Good' is in terms of the F.C.I. Circular dated 22.07.2002 and in case, the F.C.I. chooses to revise its promotion policy and prescribe any other yardstick, the petitioner's case for promotion would be considered in accordance with the relevant promotion policy existing during the period when his case is considered for promotion.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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22.09.2005

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